APPENDIX A

Selected References: Statutes of Virginia Related to the Department of Mental Health, Mental Retardation and Substance Abuse Services (Non-Forensic)

§ 15.1-131

Police, etc., may be sent beyond territorial limits; reciprocal agreements between counties, cities or towns and certain private police forces for mutual aid

Whenever the necessity arises for the enforcement of laws designed to control or prohibit the use or sale of controlled drugs as defined in § 54.1-3401 or laws contained in Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2, or in response to any law-enforcement emergency involving any immediate threat to life or public safety, or during the execution of the provisions of § 37.1-67.01 or § 37.1-67.1 relating to orders for temporary detention or emergency custody for mental health evaluation or during any emergency resulting from the existence of a state of war, internal disorder, or fire, flood, epidemic or other public disaster, the policemen and other officers, agents and employees of any county, city or town and the police of any state-supported institution of higher learning appointed pursuant to § 23-233 may, together with all necessary equipment, lawfully go or be sent beyond the territorial limits of such county, city or town or such state-supported institution of higher learning to any point within or without the Commonwealth to assist in meeting such emergency or need, or while enroute to a part of the jurisdiction which is only accessible by roads outside the jurisdiction. However, the police of any state-supported institution of higher learning may be sent only to a county, city or town within the Commonwealth, or locality outside the Commonwealth, whose boundaries are contiguous with the county or city in which such institution is located. No member of a police force of any state-supported institution of higher learning shall be sent beyond the territorial limits of the county or city in which such institution is located unless such member has met the requirements established by the Department of Criminal Justice Services as provided in subdivision 2 (I) of § 9-170.

In such event the acts performed for such purpose by such policemen or other officers, agents or employees and the expenditures made for such purpose by such county, city or town or a state-supported institution of higher learning shall be deemed conclusively to be for a public and governmental purpose, and all of the immunities from liability enjoyed by a county, city or town or a state-supported institution of higher learning when acting through its policemen or other officers, agents or employees for a public or governmental purpose within its territorial limits shall be enjoyed by it to the same extent when such county, city or town or a state-supported institution of higher learning within the Commonwealth is so acting, under this section or under other lawful authority, beyond its territorial limits.

The policemen and other officers, agents and employees of any county, city or town or a state-supported institution of higher learning when acting hereunder or under other lawful authority beyond the territorial limits of such county, city or town or such state-supported

institution of higher learning shall have all of the immunities from liability and exemptions from laws, ordinances and regulations and shall have all of the pension, relief, disability, workers' compensation and other benefits enjoyed by them while performing their respective duties within the territorial limits of such county, city or town or such state-supported institution of higher learning.

Subject to the approval of the Congress of the United States, the governing body of any county, city or town or a state-supported institution of higher learning, may in its discretion, enter into reciprocal agreements for such periods as it deems advisable with any county, city or town, within or without the Commonwealth, including the District of Columbia, in order to establish and carry into effect a plan to provide mutual aid through the furnishing of its police and other employees and agents together with all necessary equipment in the event of such need or emergency as provided herein. No county, city or town or state-supported institution of higher learning, shall enter into such agreement unless the agreement provides that each of the parties to such agreement shall: (I) waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions under such agreement and (ii) indemnify and save harmless the other parties to such agreement from all claims by third parties for property damage or personal injury which may arise out of the activities of the other parties to such agreement outside their respective jurisdictions under such agreement.

The principal law-enforcement officer, in any city, county or town or of a state-supported institution of higher learning having a reciprocal agreement with a jurisdiction outside the Commonwealth for police mutual aid under the provisions hereof, shall be responsible for directing the activities of all policemen and other officers and agents coming into his jurisdiction under the reciprocal agreement, and while operating under the terms of the reciprocal agreement, the principal law-enforcement officer is empowered to authorize all policemen and other officers and agents from outside the Commonwealth to enforce the laws of the Commonwealth of Virginia to the same extent as if they were duly authorized law-enforcement officers of any city, county or town or a state-supported institution of higher learning in Virginia.

The governing body of any city, county or town or a state-supported institution of higher learning in the Commonwealth is authorized to procure or extend the necessary public liability insurance to cover claims arising out of mutual aid agreements executed with other cities, counties or towns outside the Commonwealth.

The policemen, and other officers, agents and employees of a county, city or town or a state-supported institution of higher learning serving in a jurisdiction outside the Commonwealth under a reciprocal agreement entered into pursuant hereto are authorized to carry out the duties and functions provided for in the agreement under the command and supervision of the chief law-enforcement officer of the jurisdiction outside the Commonwealth.

§ 15.1-138

Powers and duties of police force; compensation; rewards

The officers and privates constituting the police force of counties, cities and towns of the Commonwealth are hereby invested with all the power and authority which formerly belonged to the office of constable at common law in taking cognizance of, and in enforcing the criminal laws of the Commonwealth and the ordinances and regulations of the county, city or town, respectively, for which they are appointed or elected. Each policeman shall endeavor to prevent the commission within the county, city or town of offenses against the law of the Commonwealth and against the ordinances and regulations of the county, city or town; shall observe and enforce all such laws, ordinances and regulations; shall detect and arrest offenders against the same; shall preserve the good order of the county, city or town; and shall secure the inhabitants thereof from violence and the property therein from injury.

Such policeman shall have no power or authority in civil matters, except that a policeman of a county, city or town may execute and serve an order of temporary detention and an emergency custody order and may exercise such other powers as may be specified for law-enforcement officers pursuant to § 37.1-67.01 or § 37.1-67.1 or may serve an order of protection pursuant to §§ 16.1-253.1, 16.1-253.4 and 16.1-279.1. However, a policeman of a city or town shall in all other cases execute such warrants or summons as may be placed in his hands by any magistrate for the county, city or town and shall make due return thereof.

Except as otherwise specifically provided in the charter of any city or town, such policeman shall not receive any fee or other compensation out of the state treasury or the treasury of the city or town for any service rendered under the provisions of this chapter other than the salary paid him by the city or town and a fee as a witness in cases arising under the criminal laws of the Commonwealth. And except as otherwise specifically provided in the charter of any city or town, such policeman shall not receive any fee as a witness in any case arising under the ordinances of his city or town; nor for attendance as a witness before any magistrate in his city or town. If, however, it shall become necessary or expedient for him to travel beyond the limits of the county, city or town in his capacity as a policeman, he shall be entitled to his actual expenses, to be allowed and paid as is now provided by law for other expenses in criminal cases.

Nothing in this section shall be construed as prohibiting a policeman of a county, city or town from claiming and receiving any reward which may be offered for the arrest and detention of any offender against the criminal laws of this or any other state or nation.

§ 16.1-275

(For effective date - See note) Physical and mental examinations and treatment; nursing and medical care

The juvenile court or the circuit court may cause any juvenile within its jurisdiction under the provisions of this law to be physically examined and treated by a physician or to be examined and treated at a local mental health center. If no such appropriate facility is available locally, the court may order the juvenile to be examined and treated by any physician or psychiatrist or examined by a clinical psychologist. The Commissioner of Mental Health, Mental Retardation and Substance Abuse Services shall provide for distribution a list of appropriate mental health centers available throughout the Commonwealth. Upon the written recommendation of the person examining the juvenile that an adequate evaluation of the juvenile's treatment needs can only be performed in an inpatient hospital setting, the court shall have the power to send any such juvenile to a state mental hospital for not more than ten days for the purpose of obtaining a recommendation for the treatment of the juvenile. No juvenile sent to a state mental hospital pursuant to this provision shall be held or cared for in any maximum security unit where adults determined to be criminally insane reside; the juvenile shall be kept separate and apart from such adults. However, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or § 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or the public.

Whenever the parent or other person responsible for the care and support of a juvenile is determined by the court to be financially unable to pay the costs of such examination as ordered by the juvenile court or the circuit court, such costs may be paid according to standards, procedures and rates adopted by the State Board, from funds appropriated in the general appropriation act for the Department.

The juvenile court or the circuit court may cause any juvenile within its jurisdiction who is alleged to be delinquent or in need of services to be placed in the temporary custody of the Department of Juvenile Justice for a period of time not to exceed thirty days for diagnostic assessment services after the adjudicatory hearing and prior to final disposition of his or her case. Prior to such a placement, the Department shall determine that the personnel, services and space are available in the appropriate correctional facility for the care, supervision and study of such juvenile and that the juvenile's case is appropriate for referral for diagnostic services.

Whenever a juvenile concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the juvenile court or the circuit court may order the parent or other person responsible for the care and support of the juvenile to provide such care in a hospital or

otherwise and to pay the expenses thereof. If the parent or other person is unable or fails to provide such care, the juvenile court or the circuit court may refer the matter to the authority designated in accordance with law for the determination of eligibility for such services in the county or city in which such juvenile or his parents have residence or legal domicile.

In any such case, if a parent who is able to do so fails or refuses to comply with the order, the juvenile court or the circuit court may proceed against him as for contempt or may proceed against him for nonsupport.

§ 16.1-280

(For effective date - See note) Commitment of mentally ill or mentally retarded juveniles

When any juvenile court has found a juvenile to be in need of services or delinquent pursuant to the provisions of this law and reasonably believes such juvenile is mentally ill or mentally retarded, the court may commit him to an appropriate hospital in accordance with the provisions of §§ 16.1-338 through 16.1-345 or admit him to a training center in accordance with the provisions of § 37.1-65.1 for observation as to his mental condition. No juvenile shall be committed pursuant to this section or §§ 16.1-338 through 16.1-345 to a maximum security unit within any state hospital where adults determined to be criminally insane reside. However, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or § 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or public. The Commissioner shall notify the committing court of any placement in such unit. The committing court shall review the placement at thirty-day intervals.

§ 16.1-338

Parental admission of minors younger than fourteen and nonobjecting minors fourteen years of age or older

A. A minor younger than fourteen years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. A minor fourteen years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent.

B. Admission of a minor under this section shall be approved by a qualified evaluator who has conducted a personal examination of the minor within forty-eight hours after admission and has made the following written findings:

1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and

2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and

3. If the minor is fourteen years of age or older, that he has been provided with an explanation of his rights under this Act as they would apply if he were to object to admission, and that he has consented to admission; and

4. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the examination required by this section and shall ensure that the necessary written findings have been made before approving the admission. A copy of the written findings of the evaluation required by this section shall be provided to the consenting parent and the parent shall have the opportunity to discuss the findings with the evaluator.

C. Within ten days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured. A copy of the plan shall be provided to the minor and to his parents.

D. If the parent who consented to a minor's admission under this section revokes his consent at any time, or if a minor fourteen or older objects at any time to further treatment, the minor shall be discharged within forty-eight hours to the custody of such consenting parent unless the minor's continued hospitalization is authorized pursuant to §§ 16.1-339, 16.1-340, or § 16.1-345.

E. Inpatient treatment of a minor hospitalized under this section may not exceed ninety consecutive days unless it has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the minor's condition.

F. Any minor admitted under this section while younger than fourteen and his consenting parent shall be informed orally and in writing by the director of the facility for inpatient treatment within ten days of his fourteenth birthday that continued voluntary treatment under the authority of this section requires his consent.

§ 16.1-339

(For effective date - See note) Parental admission of an objecting minor fourteen years of age or older

A. A minor fourteen years of age or older who objects to admission may be admitted to a willing facility for up to seventy-two hours, pending the review required by subsections B and C of this section, upon the application of a parent. If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the examination required by subsection B of § 16.1-338 and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.

B. A minor admitted under this section shall be examined within twenty-four hours of his admission by a qualified evaluator designated by the community services board serving the area where the facility is located who is not and will not be treating the minor and who has no significant financial interest in the minor's hospitalization. The evaluator shall prepare a report which shall include written findings as to whether:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. Inpatient treatment is the least restrictive alternative that meets the minor's needs.

The qualified evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located.

C. Upon admission of a minor under this section, the facility shall immediately file a petition for judicial approval with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the juvenile and domestic relations district court judge or special justice appointed pursuant to § 37.1-88 shall appoint a guardian ad litem for the minor. The court and the guardian ad litem shall review the petition and evaluator's report, and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The court shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the court shall order one of the following dispositions:

1. If the court finds that the minor does not meet the criteria for admission specified in subsection B, the court shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.

2. If the court finds that the minor meets the criteria for admission specified in subsection B, the court shall issue an order authorizing continued hospitalization of the minor for up to ninety days on the basis of the parent's consent.

Within ten days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.

3. If the court determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection B, the court shall schedule a commitment hearing which shall be conducted in accordance with the procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to seventy-two additional hours pending the holding of the commitment hearing.

D. A minor admitted under this section who rescinds his objection may be retained in the hospital pursuant to § 16.1-338.

E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within forty-eight hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § 16.1-340 or § 16.1-345.

§ 16.1-341

(For effective date - See note) Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel

A. A petition for the involuntary commitment of a minor may be filed with the juvenile and domestic relations district court by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345. The petition shall be taken under oath.

If a commitment hearing has been scheduled by a juvenile and domestic relations district judge pursuant to subdivision 3 of subsection C of § 16.1-339, the petition for judicial approval filed by the facility under subsection C of § 16.1-339 shall serve as the petition for involuntary commitment as long as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court may schedule a hearing which shall occur no sooner than twenty-four hours and no later than seventy-two hours from the time the petition was filed. If the seventy-two-hour period expires on a Saturday, Sunday or other legal holiday, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday or legal holiday. In no case may the time period between the filing of the petition and the hearing under § 16.1-344 exceed ninety-six hours.

If the petition is not dismissed, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners. No later than twenty-four hours before the hearing, the court shall appoint counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the court may continue the hearing once for a period not to exceed seventy-two hours.

§ 16.1-342

(For effective date - See note) Involuntary commitment; clinical evaluation

Upon the filing of a petition for involuntary commitment, the juvenile and domestic relations district court shall direct the community services board serving the area in which the minor is located to arrange for an evaluation, if one has not already been performed pursuant to subsection B of § 16.1-339, by a qualified evaluator who is not and will not be treating the minor and who has no significant financial interest in the facility to which the minor would be committed. The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of treatment or education of the minor. At least twenty-four hours before the scheduled hearing, the evaluator shall submit to the court a written report which includes the evaluator's opinion regarding whether the minor meets the criteria for involuntary commitment specified in § 16.1-345. The evaluator shall attend the hearing as a witness.

§ 16.1-343

Involuntary commitment; duties of attorney for the minor

As far as possible in advance of a hearing conducted under § 16.1-344, or an appeal from such a hearing, the minor's attorney shall interview the minor; the minor's parent, if available; the petitioner; and the qualified evaluator. He shall interview all other material witnesses, and examine all relevant diagnostic and other reports. The obligation of the minor's attorney during the hearing or appeal is to interview witnesses, obtain independent experts when possible, cross-examine adverse witnesses, present witnesses on behalf of the minor, articulate the wishes of the minor, and otherwise fully represent the minor in the proceeding. Counsel appointed by the court shall be compensated in an amount not to exceed $100.

§ 16.1-344

(For effective date - See note) Involuntary commitment; hearing

The court shall summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath. The rules of evidence shall apply; however, the evaluator's report required by § 16.1-342 shall be admissible into evidence by stipulation of the parties. The petitioner, minor and, with leave of court for good cause shown, any other person shall be given the opportunity to present evidence and cross-examine witnesses. The hearing shall be closed to the public unless the minor and petitioner request that it be open.

Within thirty days of any final order committing the minor or dismissing the petition, the minor or petitioner shall have the right to appeal de novo to the circuit court having jurisdiction where the minor was committed or where the minor is hospitalized pursuant to the commitment order. The juvenile and domestic relations district court shall appoint an attorney to represent any minor desiring to appeal who does not appear to be already represented.

§ 16.1-345

Involuntary commitment; criteria

The court shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed ninety days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. If inpatient treatment is ordered, such treatment is the least restrictive alternative that meets the minor's needs. If the court finds that inpatient treatment is not the least restrictive treatment, the court may order the minor to participate in outpatient or other clinically appropriate treatment.

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, or normal development, and that issuance of a removal order or protective order is authorized by § 16.1-252 or § 16.1-253.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the

community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The judge shall order the sheriff to transport the minor to the designated mental health facility as specified in § 37.1-71. The transportation of the committed minor by the minor's parent may be authorized at the discretion of the judge.

§ 19.2-169.6

Emergency treatment prior to trial

A. Any defendant who is not subject to the provisions of § 19.2-169.2 may be hospitalized for psychiatric treatment prior to trial if:

1. The court with jurisdiction over the defendant's case finds clear and convincing evidence that the defendant (I) is being properly detained in jail prior to trial; (ii) is mentally ill and imminently dangerous to self or others in the opinion of a qualified mental health professional; and (iii) requires treatment in a hospital rather than the jail in the opinion of a qualified mental health professional; or

2. The person having custody over a defendant who is awaiting trial has reasonable cause to believe that (I) the defendant is mentally ill and imminently dangerous to himself or others and (ii) requires treatment in a hospital rather than jail and the person having such custody arranges for an evaluation of the defendant by a person skilled in the diagnosis and treatment of mental illness provided a judge, as defined in § 37.1-1 or, if a judge is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary order of detention for treatment in accordance with the procedures specified in § 37.1-67.1. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.1-65 or § 37.1-67.3.

If the defendant is committed pursuant to subdivision 1 of this subsection, the attorney for the defendant shall be notified that the court is considering hospitalizing the defendant for psychiatric treatment and shall have the opportunity to challenge the findings of the qualified mental health professional. If the defendant is detained pursuant to subdivision 2 of this subsection, the court having jurisdiction over the defendant's case and the attorney for the defendant shall be given notice prior to the detention pursuant to a temporary order of detention or as soon thereafter as is reasonable. Upon detention pursuant to subdivision 2 of this subsection, a hearing shall be held, upon notice to the attorney for the defendant, either (I) before the court having jurisdiction over the defendant's case or (ii) before a judge as defined in § 37.1-1, in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be represented by counsel as specified in § 37.1-67.3; the hearing shall be held within forty-eight

hours of execution of the temporary order to allow the court which hears the case to make the findings, based upon clear and convincing evidence, which are specified in subdivision 1 of this subsection. If the forty-eight-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained for the same period allowed for detention pursuant to an order for temporary detention issued pursuant to § 37.1-67.1.

In any case in which the defendant is hospitalized pursuant to this section, the court having jurisdiction over the defendant's case may provide by order that the admitting hospital evaluate the defendant's competency to stand trial and his mental state at the time of the offense pursuant to §§ 19.2-169.1 and 19.2-169.5.

B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital shall, within thirty days of the defendant's admission, send a report to the court with jurisdiction over the defendant addressing the defendant's continued need for treatment as mentally ill and imminently dangerous to self or others and, if so ordered by the court, the defendant's competency to stand trial, pursuant to subsection D of § 19.2-169.1, and his mental state at the time of the offense, pursuant to subsection D of § 19.2-169.5. Based on this report, the court shall either (I) find the defendant incompetent to stand trial pursuant to subsection E of § 19.2-169.1 and proceed accordingly, (ii) order that the defendant be discharged from custody pending trial, (iii) order that the defendant be returned to jail pending trial, or (iv) make other appropriate disposition, including dismissal of charges and release of the defendant.

C. A defendant may not be hospitalized longer than thirty days under this section unless the court which has criminal jurisdiction over him or a judge as defined in § 37.1-1 holds a hearing at which the defendant shall be represented by an attorney and finds clear and convincing evidence that the defendant continues to be (I) mentally ill, (ii) imminently dangerous to self or others, and (iii) in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of sixty days, but in no event may such hospitalization be continued beyond trial, nor shall such hospitalization act to delay trial, so long as the defendant remains competent to stand trial.

§ 19.2-177.1

Determination of mental illness after sentencing; hearing

A person convicted of a crime who is in the custody of a local correctional facility after sentencing may be the subject of a mental commitment proceeding in accordance with the procedures provided in Chapter 2 (§ 37.1-63 et seq.) of Title 37.1. Such proceeding shall be commenced upon petition of the person having custody over the prisoner. If the person having custody over the prisoner has reasonable cause to believe that (I) the prisoner is mentally ill and

imminently dangerous to himself or others and (ii) requires treatment in a hospital rather than a local correctional facility and the person having such custody arranges for an evaluation of the prisoner by a person skilled in the diagnosis and treatment of mental illness, then a judge, as defined in § 37.1-1 or, if a judge is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, may issue a temporary order of detention for treatment in accordance with the procedures specified in subdivision A 2 of § 19.2-169.6.

In all other respects, the involuntary civil detention and commitment procedures specified in Chapter 2 of Title 37.1 shall be applicable, except:

1. Any detention or commitment shall be only to a facility designated for this purpose by the Commissioner;
2. In no event shall the prisoner have the right to make application for voluntary admission and treatment as may be otherwise provided in § 37.1-65 or § 37.1-67.3;
3. The time that such prisoner is confined to a hospital shall be deducted from any term for which he may be sentenced, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired;
4. Any prisoner hospitalized pursuant to this section who has not completed service of his sentence upon discharge from the hospital shall serve the remainder of his sentence.

§ 37.1-48

Transfer of patients from one facility to another

The Commissioner may order the transfer of a resident or patient from one state hospital to another or from one training center for the mentally retarded to another. When so transferred, in accordance with appropriate admission, certification and commitment criteria as provided in this title, a patient or resident is hereby declared to be a lawfully admitted patient or resident of the facility to which he is transferred.

§ 37.1-64

(For effective date - See note) Admission procedures; forms

(a) Any person alleged to be mentally ill to a degree which warrants hospitalization in a hospital as defined in § 37.1-1 of this title may be admitted to and retained as a patient in a hospital by compliance with any one of the following admission procedures:

(1) Voluntary admission by the procedure described in § 37.1-65;

(2) Involuntary admission by the procedure described in §§ 37.1-67.1 through 37.1-67.4.

(b) The Board shall prescribe and the Department shall prepare the forms required in procedures for admission as approved by the Attorney General. These forms, which shall be the legal forms used in such admissions, shall be distributed by the Department to the clerks of the general district courts and juvenile and domestic relations district courts of the various counties and cities of the Commonwealth and to the directors of the respective state hospitals.

(c) Any person alleged to be mentally ill to a degree which warrants emergency hospitalization may be admitted to and retained as a patient in the state hospital closest to his domicile by compliance with the admission procedures provided in § 37.1-65 or §§ 37.1-67.1 through 37.1-67.4.

§ 37.1-65

Voluntary admission

Any state hospital shall admit as a patient any person requesting admission who, having been screened by the community services board or the community mental health clinic which serves the political subdivision of which the person is a resident and having been examined by a physician on the staff of such hospital, is deemed to be in need of hospitalization by such board or clinic and the physician for mental illness, mental retardation or substance abuse.

§ 37.1-67.01

Emergency custody; issuance and execution of order

Based upon probable cause to believe that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, any magistrate may, upon the sworn petition of any responsible person or upon his own motion, issue an emergency custody order requiring any person within his judicial district who is incapable of volunteering or unwilling to volunteer for treatment to be taken into custody and transported to a convenient location to be evaluated by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness in order to assess the need for hospitalization. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization without prior authorization. Such evaluation shall be conducted immediately. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city or town in which he serves to any point in the Commonwealth

for the purpose of executing an order for emergency custody pursuant to this section. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

If an order of emergency custody is not executed within four hours of its issuance the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any judge or magistrate thereof.

§ 37.1-67.1

Involuntary temporary detention; issuance and execution of order

For the purposes of this section, a designee of a community services board is defined as an examiner able to provide an independent examination of the person who is not related by blood or marriage to the person, who has no financial interest in the admission or treatment of the person, who has no investment interest in the hospital detaining or admitting the person under this article and, except for employees of state hospitals and of the U.S. Department of Veterans Affairs, who is not employed by such hospital. For purposes of this section, investment interest means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

A magistrate may, upon the advice of, and only after an in-person evaluation by, an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness, issue an order of temporary detention if it appears from all evidence readily available that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, and the person is incapable of volunteering or unwilling to volunteer for treatment. Such order may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement.

A magistrate may issue such order of temporary detention without an emergency custody order proceeding. A magistrate may issue an order of temporary detention without a prior in-person evaluation if (I) the person has been personally examined within the previous seventy-two hours by an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness or (ii) there is a significant physical, psychological or medical risk, to the person or to others, associated with conducting such evaluation.

An employee of the local community services board or its designee shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility shall be identified on the prescreening report and indicated on the temporary detention order. The Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention. The institution or other place of detention shall be approved pursuant to regulations of the Board of Mental Health, Mental Retardation and Substance Abuse Services. The employee of the community services board or its designee who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, such person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any order for temporary detention pursuant to this section. The duration of temporary detention shall not exceed forty-eight hours prior to a hearing. If the forty-eight-hour period herein specified terminates on a Saturday, Sunday or legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday or legal holiday, but in no event may he be detained for longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. For purposes of this section, a Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

In any case in which temporary detention is ordered pursuant to this section upon petition of a person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate executing the order of temporary detention shall place such person in a hospital designated by § 19.2-169.6 B, or if such facility is not available, the defendant shall be detained in a jail or other place of confinement for persons charged with criminal offenses and shall be transferred to such hospital as soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant, either (I) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed and the hearing scheduled in accordance with the provisions of § 16.1-341.

On such petition and prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341, the judge may release such person on his personal recognizance or bond set by the judge if it appears from all evidence readily available that such release will not pose an imminent danger to himself or others. In the case of a minor, the judge may release the minor to his parent. The director of

the hospital in which the person is detained may release such person prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person would not present an imminent danger to self or others if released.

If an order of temporary detention is not executed within twenty-four hours of its issuance, or within such shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or if such office is not open, to any judge or magistrate thereof. Subsequent orders may be issued upon the original petition within ninety-six hours after the petition is filed. However, a magistrate must again obtain the advice of an employee of the local community services board or its designee who is skilled in the diagnosis or treatment of mental illness prior to issuing a subsequent order upon the original petition. Any petition for which no order of temporary detention or other process in connection therewith is served on the subject of the petition within ninety-six hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

The chief judge of each general district court shall establish and require that a magistrate, as provided by this section, be available seven days a week, twenty-four hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its jurisdiction a list of its employees and designees who are available to perform the evaluations required herein.

§ 37.1-67.3

Same; involuntary admission and treatment

The commitment hearing shall be held within forty-eight hours of the execution of the temporary detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday, or legal holiday, but in no event may the person be detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday.

The judge, in commencing the commitment hearing, shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment as provided for in § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall ascertain if such person is then willing and capable of seeking voluntary admission and treatment. If the person is capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept voluntary admission for a minimum period of

treatment and after such minimum period, not to exceed seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the requirement for prescreening by a community services board or community mental health clinic as provided in § 37.1-65.

If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge shall inform such person of his right to a commitment hearing and right to counsel. The judge shall ascertain if a person whose admission is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

A written explanation of the involuntary commitment process and the statutory protections associated with the process shall be given to the person and its contents explained by an attorney prior to the commitment hearing. The written explanation shall include, at a minimum, an explanation of the person's right to retain private counsel or be represented by a court-appointed attorney, to present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, to be present during the hearing and testify, to appeal any certification for involuntary admission to the circuit court, and to have a jury trial on appeal. The judge shall ascertain whether the person whose admission is sought has been given the written explanation required herein.

To the extent possible, during or before the commitment hearing, the attorney for the person whose admission is sought shall interview his client, the petitioner, the examiner described below, the community services board staff, and any other material witnesses. He shall also examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing and the person whose admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist or a psychologist who is licensed in Virginia by either the Board of Medicine or the Board of Psychology who is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, any mental health professional who is (I) licensed in Virginia through the Department of Health Professions and (ii) qualified in the diagnosis of mental illness.

The examiner chosen shall be able to provide an independent examination of the person. The examiner shall not be related by blood or marriage to the person, shall not be responsible for treating the person, shall have no financial interest in the admission or treatment of the person, shall have no investment interest in the hospital detaining or admitting the person under this article, and, except for employees of state hospitals and of the U.S. Department of Veterans Affairs, shall not be employed by such hospital. For purposes of this section, investment interest means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

All such examinations shall be conducted in private. The judge shall summons the examiner who shall certify that he has personally examined the individual and has probable cause to believe that the individual (I) is or is not so seriously mentally ill as to be substantially unable to care for himself, or (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and (iii) requires or does not require involuntary hospitalization or treatment. Alternatively, the judge, in his discretion, may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection sustained to the acceptance of such written certification by the person or his attorney. The judge shall not render any decision on the petition until such examiner has presented his report either orally or in writing.

Except as otherwise provided in this section, prior to making any adjudication that such person is mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from the community services board which serves the political subdivision where the person resides a prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. The report shall state whether the person is deemed to be so seriously mentally ill that he is substantially unable to care for himself, an imminent danger to himself or others as a result of mental illness and in need of involuntary hospitalization or treatment, whether there is no less restrictive alternative to institutional confinement and what the recommendations are for that person's care and treatment. In the case of a person sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section without requesting a prescreening report from the community services board.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically that the person (I) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to institutional confinement and treatment, the judge shall by written order and specific findings so certify and order that the person be placed in a hospital or

other facility for a period of treatment not to exceed 180 days from the date of the court order. Such placement shall be in a hospital or other facility designated by the community services board which serves the political subdivision in which the person was examined as provided in this section. If the community services board does not provide a placement recommendation at the commitment hearing, the person shall be placed in a hospital or other facility designated by the Commissioner.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically that the person (I) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that less restrictive alternatives to institutional confinement and treatment have been investigated and are deemed suitable, and if, moreover, the judge finds specifically that (I) the patient has the degree of competency necessary to understand the stipulations of his treatment, (ii) the patient expresses an interest in living in the community and agrees to abide by his treatment plan, (iii) the patient is deemed to have the capacity to comply with the treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis, and (v) the ordered treatment can be monitored by the community services board or designated providers, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.5, or such other appropriate course of treatment as may be necessary to meet the needs of the individual. Upon failure of the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital. The community services board which serves the political subdivision in which the person resides shall recommend a specific course of treatment and programs for provision of such treatment. The community services board shall monitor the person's compliance with such treatment as may be ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section.

The judge shall make or cause to be made a tape or other audio recording of the hearing and shall submit such recording to the appropriate district court clerk to be retained in a confidential file. Such recordings shall only be used to document and to answer questions concerning the judge's conduct of the hearing. These recordings shall be retained for at least three years from the date of the relevant commitment hearing. The judge shall also order that copies of the relevant medical records of such person be released to the facility or program in which he is placed upon request of the treating physician or director of the facility or program. Except as provided in this section, the court shall keep its copies of relevant medical records, reports, and court documents pertaining to the hearings provided for in this section confidential if so requested by such person, or his counsel, with access provided only upon court order for good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such person shall be released at the expiration of 180 days

unless involuntarily committed by further petition and order of a court as provided herein or such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

The procedures required by this section shall be followed at such commitment hearing. The judge shall render a decision on such petition after the appointed examiner has presented his report, either orally or in writing, and after the community services board which serves the political subdivision where the person resides has presented a prescreening report, either orally or in writing, with recommendations for that person's placement, care and treatment.

The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary commitment to a hospital. The copy of the form and the order shall be kept confidential in a separate file and used only for the purpose of conducting a firearms transaction record check authorized by §18.2-308.2:2.

§ 37.1-67.4

Same; where hearings may be held; services during temporary detention; costs

The hearing provided for pursuant to § 37.1-67.3 may be conducted by the judge at the convenient institution or other place provided for in § 37.1-67.1, if he deems it advisable, even though such institution or place is located in a county or city other than his own. In conducting such hearings in a county or city other than his own, the judge shall have all of the authority and power which he would have in his own county or city. A judge, substitute judge or special justice of the county or city in which such institution or place is located may conduct the hearing provided for in § 37.1-67.3.

Any such convenient institution caring for a person placed with it pursuant to a temporary order of detention is authorized to provide emergency medical and psychiatric services within its capabilities when the institution determines such services are in the best interests of the person within its care. The costs incurred as a result of such hearings and such costs incurred by the convenient institution in providing such services during such period of temporary detention shall be paid and recovered as provided in § 37.1-89. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria.

Where coverage by a third-party payor exists, the institution seeking reimbursement under this section shall first seek reimbursement from the third-party payor. The Commonwealth shall reimburse the providers only for the balance of costs remaining after the allowances covered by the third-party payor have been received.

§ 37.1-67.5

Same; interpreters for deaf persons in commitment or certification proceedings

In any proceeding pursuant to § 37.1-65.1 or §§ 37.1-67.1 through 37.1-67.4 in which a deaf person is alleged to be mentally retarded or mentally ill, an interpreter for such deaf person shall be appointed by the justice of the court in which such proceeding is pending from a list of qualified interpreters provided by the Department for the Deaf and Hard-of-Hearing. Such interpreter shall be compensated as provided for in § 37.1-89.

§ 37.1-67.6

Appeal of commitment or certification order

Any person involuntarily committed pursuant to § 37.1-67.3 or certified as eligible for admission pursuant to § 37.1-65.1 shall have the right to appeal such order to the circuit court in the jurisdiction wherein he was committed or certified or wherein the hospital or mental retardation facility to which he was admitted is located. Choice of venue shall rest with the party noting the appeal. The court may transfer the case upon a finding that the other forum is more convenient. Such appeal must be filed within thirty days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 providing time within which the court shall set criminal cases for trial. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § 37.1-89.

The appeal shall be heard de novo. An order continuing the commitment shall be entered only if the criteria in § 37.1-67.3 are met at the time the appeal is heard. The person so committed or certified shall be entitled to trial by jury. Seven persons from a panel of thirteen shall constitute a jury in such cases.

If such person is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. Counsel so appointed shall be paid a fee of seventy-five dollars and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

§ 37.1-70

Examination of persons presented for admission

Any person presented for admission to a hospital shall forthwith, and not later than twenty-four hours after arrival, be examined by one or more of the physicians on the staff thereof. If such examination reveals that there is sufficient cause to believe that such person is mentally ill, he shall be retained at the hospital; but if the examination reveals insufficient cause, the person shall be returned to the locality in which the petition was initiated or in which such person resides.

The Board shall promulgate rules and regulations to institute preadmission screening to prevent inappropriate admissions to the facilities and programs operated by the Department.

§ 37.1-71

Transportation of person certified for admission

When a person has been certified for admission to a hospital under §§ 37.1-67.3, 37.1-67.4 or § 37.1-67.6, a determination shall be made by the judge regarding the transportation of that person to the proper hospital. The judge may consult with the person's treating mental health professional and any involved community services board staff regarding the person's dangerousness and whether the sheriff should transport or whether transportation alternatives as provided in § 37.1-72 may be utilized. If the judge determines that the person requires transportation by the sheriff, such person may be delivered to the care of the sheriff, as specified in this section, who shall transport such person to the proper hospital. In no event shall transport commence later than six hours after notification to the sheriff of such certification.

The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the person unless the sheriff's office of such jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person. The cost of transportation of any person so applying or certified for admission pursuant to § 37.1-67.3 or § 37.1-67.4 shall be paid by the Commonwealth from the same funds as for care in jail.

If any state hospital has become too crowded to accommodate any such person certified for admission therein, the Commissioner shall give notice of the fact to all sheriffs and shall designate the hospital to which they shall transport such persons.

§ 37.1-72

Custody of certified person for purpose of transportation

Any judge who shall certify an admission under this chapter may order that such person be placed in the custody of any responsible person or persons, including a representative of the facility in which the individual is temporarily hospitalized during the temporary detention period, for the sole purpose of transporting such person to the proper hospital.

§ 37.1-73

Detention in jail after certification

It shall be unlawful for any sheriff, sergeant or other officer to use any jail or other place of confinement for criminals as a place of detention for any person in his custody for transportation to a hospital, unless the detention therein of such person not to exceed a period of twenty-four hours is specifically authorized by the committing judge, except that such authority shall not be given by any judge for the Counties of Augusta, Arlington and Fairfax and the Cities of Alexandria, Fairfax, Falls Church, Waynesboro and Staunton.

§ 37.1-74

Mentally ill persons not to be confined in cells with criminals

In no case shall any sheriff or jailer confine any mentally ill person in a cell or room with prisoners charged with or convicted of crime.

§ 37.1-75

Escape, sickness, death or discharge of certified person while in custody; warrant for person escaping

If any person who has been certified for admission to a hospital, while in the custody of a sheriff or other person, shall escape, become too sick to travel, die, or be discharged by due process of law, the sheriff or other person shall immediately notify the Commissioner of that fact. If any person with whose custody a sheriff or other person has been charged under the provisions of this chapter shall escape, the sheriff or other person having such individual in custody shall immediately secure a warrant from any officer authorized to issue warrants

charging the individual with escape from lawful custody, directing his apprehension and stating what disposition shall be made of such person upon arrest.

§ 37.1-76

Arrest of certain persons involuntarily confined

If any person involuntarily confined in any hospital escape therefrom, the director may forthwith issue a warrant directed to any officer authorized to make arrests, who shall arrest such person and carry him back to the hospital or such other appropriate facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services which is in close proximity to the jurisdictions served by the arresting officer. The officer to whom the warrant is directed may execute the same in any part of the Commonwealth.

§ 37.1-77

Arrest without warrant

Any officer authorized to make arrests is authorized to make such an arrest under a warrant issued under the provisions of § 37.1-75 or § 37.1-76, without having such warrant in his possession, provided the same has been issued and the arresting officer has been advised of the issuance thereof by telegram, radio or teletype message containing the name of the person wanted, directing the disposition to be made of the person when apprehended, and stating the basis of the issuance of the warrant.

§ 37.1-78

Attendants to conduct persons admitted voluntarily to hospitals

When application is made to the director of a hospital for admission pursuant to § 37.1-65, he may send an attendant from the hospital to conduct such person to the hospital. If for any reason it is impracticable to employ an attendant for this purpose, then the director may appoint some suitable person for the purpose, or may request the sheriff of the county or city in which the person resides to convey him to the hospital. The sheriff or other person appointed for the purpose shall receive only his necessary expenses for conveying any person admitted to the hospital. Expenses authorized herein shall be paid by the Department.

§ 37.1-78.1

Transfer of patients

Whenever any patient is retained in or by a state hospital, the Commissioner upon recommendation by the community services board serving the patient's county or city of residence prior to his admission to such hospital may order the transfer of any such patient to any other hospital or Veterans Administration hospitals, centers, and other facilities and installations, and such other hospital or Veterans Administration hospitals, centers, and other facilities and installations may retain such patient under the authority of the admission or order applicable to the hospital from which such patient was transferred. No such transfer shall alter any right of a patient under the provisions of this chapter nor shall such transfer divest a judge or court, before which a hearing or request therefor is pending, of jurisdiction to conduct such hearing.

§ 37.1-88

Special justices to perform duties of judge under this title

The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of performing the duties required of a judge by this title. At the time of appointment each such special justice shall be a person licensed to practice law in this Commonwealth, shall have all the powers and jurisdiction conferred upon a judge by this title and shall serve under the supervision and at the pleasure of the chief judge making the appointment. Within six months of appointment, each special justice appointed on or after January 1, 1996, shall complete a minimum training program as prescribed by the Executive Secretary of the Supreme Court. Special justices shall collect the fees prescribed in this title for such service and shall retain fees unless the governing body of the county or city in which such services are performed shall provide for the payment of an annual salary for such services, in which event such fees shall be collected and paid into the treasury of such county or city.

§ 37.1-89

Fees and expenses

Any special justice as defined in § 37.1-88 and any district court substitute judge who presides over hearings pursuant to the provisions of §§ 37.1-67.1 through 37.1-67.4 shall receive a fee of fifty-seven dollars and fifty cents for each commitment hearing and his necessary mileage. Any special justice and any district court substitute judge who presides over a hearing shall receive a fee of twenty-eight dollars and seventy-five cents for each certification hearing

and each order under § 37.1-134.5 ruling on competency or treatment and his necessary mileage. Every physician, psychologist, or other mental health professional, or interpreter for the deaf appointed pursuant to § 37.1-67.5 who is not regularly employed by the Commonwealth of Virginia who is required to serve as a witness or as an interpreter for the Commonwealth in any proceeding under this chapter shall receive a fee of fifty dollars and his necessary expenses for each commitment hearing in which he serves. Every physician, clinical psychologist or interpreter for the deaf appointed pursuant to § 37.1-67.5 who is not regularly employed by the Commonwealth and who is required to serve as a witness or as an interpreter for the Commonwealth in any proceeding under this chapter shall receive a fee of twenty-five dollars and necessary expenses for each certification hearing in which he serves. Other witnesses regularly summoned before a judge under the provisions of this chapter shall receive such compensation for their attendance and mileage as is allowed witnesses summoned to testify before grand juries. Every attorney appointed under § 37.1-65.1 or §§ 37.1-67.1 through 37.1-67.4 shall receive a fee of fifty dollars and his necessary expenses for each commitment hearing. Every attorney appointed shall receive a fee of twenty-five dollars and his necessary expenses for each certification hearing and each proceeding under § 37.1-134.5. Except as hereinafter provided, all expenses incurred, including the fees, attendance and mileage aforesaid, shall be paid by the Commonwealth. Any such fees, costs and expenses incurred in connection with an examination or hearing for an admission pursuant to § 37.1-65.1 or §§ 37.1-67.1 through 37.1-67.4 in carrying out the provisions of this chapter or in connection with a proceeding under § 37.1-134.5, when paid by the Commonwealth, shall be recoverable by the Commonwealth from the person who is the subject of the examination, hearing or proceeding, or from his estate. Such collection or recovery may be undertaken by the Department. All such fees, costs and expenses, if collected or recovered by the Department, shall be refunded to the Commonwealth. No such fees or costs shall be recovered, however, from the person who is the subject of the examination or his estate when no good cause for his admission exists or when the recovery would create an undue financial hardship.

§ 37.1-90

Place of hearing

Any hearing held by a judge pursuant to the provisions of this article may be held in any courtroom available within the county or city wherein the hospital is located or, unless objection thereto is made by the attorney for the person alleged to be mentally ill, in any appropriate place, open to the public, which may be made available by the Commissioner and approved by the judge. Nothing herein shall be construed as prohibiting the place of hearing being on the grounds of the hospital.

§ 37.1-91

Disposition of nonresidents

If it appears that the person examined is mentally ill and a nonresident of this Commonwealth, the same proceedings shall be had with regard to him as if he were a resident of the Commonwealth and if the nonresident be admitted to a state hospital under these proceedings, a statement of the fact of his nonresidence and of the place of his domicile or residence, or from whence he came, as far as known, shall accompany any petition respecting him. The Commissioner shall, as soon as practicable, cause him to be returned to his family or friends, if known, or the proper authorities of the state or country from which he came, if ascertained and such return is deemed expedient by the Commissioner.

§ 37.1-92

Admission of aliens

Whenever any person shall be admitted to a state hospital, or any other state institution which is supported wholly or in part by public funds, it shall be the duty of the Commissioner to inquire forthwith into the nationality of such person, and if it shall appear that such person is an alien, to notify immediately the United States immigration officer in charge of the district in which such institution is located.

Upon the official request of the United States immigration officer, in charge of the territory or district in which is located any court or justice certifying or ordering any alien for admission to such institution, it shall be the duty of the clerk of such court to furnish, without charge, a certified copy, in duplicate, of any record pertaining to the case of the admitted alien. Such information shall be deemed confidential.

§ 37.1-93

Admission of veteran to, or transfer to or from, a Veterans' Administration hospital or other facility

Whenever it appears that the person found to be mentally ill is a veteran eligible for treatment in a Veterans' Administration hospital, center, or other facility or installation, the justice may, upon receipt of a certificate of eligibility from the hospital, center, or other facility or installation concerned, certify or order the person to the hospital, center, or other facility or installation regardless of whether the person is a legal resident of this Commonwealth. Any veteran who heretofore has been, or hereafter is, a patient in a state hospital, and is eligible for treatment in a Veterans' Administration hospital, center, or other facility or installation may with the written consent of the manager of the Veterans' Administration hospital, center, or other

facility or installation, be transferred to the Veterans' Administration hospital, center, or other facility or installation. Any veteran heretofore or hereafter admitted to a Veterans' Administration hospital, center, or other facility or installation, if he be a legal resident of this Commonwealth, who is otherwise eligible for treatment in a state hospital, may with written authorization of the Commissioner, be transferred to the state hospital.

§ 37.1-98

Discharge, conditional release, and convalescent status of patients

A. The director of a state hospital may discharge any patient after the preparation of a predischarge plan formulated in cooperation with the community services board which serves the political subdivision where the patient resided prior to hospitalization or with the board located within the political subdivision the patient chooses to reside in immediately following the discharge, except one held upon an order of a court or judge for a criminal proceeding, as follows:

1. Any patient who, in his judgment, is recovered.
2. Any patient who, in his opinion, is not mentally ill.
3. Any patient who is impaired or not recovered and whose discharge, in the judgment of the director, will not be detrimental to the public welfare, or injurious to the patient.
4. Any patient who is not a proper case for treatment within the purview of this chapter.

The predischarge plan required by this paragraph shall, at a minimum, (i) specify the services required by the released patient in the community to meet the individual's needs for treatment, housing, nutrition, physical care and safety; (ii) specify any income subsidies for which the individual is eligible; (iii) identify all local and state agencies which will be involved in providing treatment and support to the individual; and (iv) specify services which would be appropriate for the individual's treatment and support in the community but which are currently unavailable. For all individuals discharged on or after January 1, 1987, the predischarge plan shall be contained in a uniform discharge document developed by the Department and used by all state hospitals. If the individual will be housed in an adult care residence, as defined in § 63.1-172, the plan shall so state.

B. The director may grant convalescent status to a patient in accordance with rules prescribed by the Board. The state hospital granting a convalescent status to a patient shall not be liable for his expenses during such period. Such liability shall devolve upon the relative, committee, person to whose care the patient is entrusted while on convalescent status, or the appropriate local public welfare agency of the county or city of which the patient was a resident

at the time of admission. The provision of social services to the patient shall be the responsibility of the appropriate local public welfare agency as determined by policy approved by the State Board of Social Services.

C. Any patient who is discharged pursuant to subdivision A 4 hereof shall, if necessary for his welfare, be received and cared for by the appropriate local public welfare agency. The provision of social services to the patient shall be the responsibility of the appropriate local public welfare agency as determined by policy approved by the State Board of Social Services. Expenses incurred by the provision of public assistance to the patient, who is receiving twenty-four-hour care while in an adult care residence licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1, shall be the responsibility of the appropriate local public welfare agency of the county or city of which the patient was a resident at the time of admission.

§ 37.1-98.2

Exchange of information between community services boards and state facilities

Community services boards and state facilities may, when the individual has refused consent, exchange the information required to prepare and implement a comprehensive individualized treatment plan including a discharge plan as specified in § 37.1-98 A. This section shall apply to all active clients of the community services boards and patients and residents in facilities.

When a patient who is deemed suitable for discharge pursuant to § 37.1-98 A or his guardian or committee refuses to authorize the release of that information which is required to formulate and implement a predischarge plan as specified in § 37.1-98 A, then the community services board may release without consent to those service providers and human service agencies identified in the predischarge plan only such information as is needed to secure those services specified in the plan. The release of any other client information to any agency or individual not affiliated directly or by contract with community services boards or facilities shall be subject to all rules and regulations promulgated by the Board or by agencies of the United States government which govern confidentiality of patient information.

It is the intent of this law that any information exchanged about a patient or resident be used only to facilitate treatment, training or community placement and that it shall be protected from disclosure for any other purpose.

§ 37.1-99

Discharge of involuntarily committed patients from a private hospital

The person in charge of a private hospital may discharge any patient involuntarily committed who is recovered, or, if not recovered, whose discharge will not be detrimental to the public welfare, or injurious to the patient, or meets such other criteria as specified in § 37.1-98. The person in charge of such institution may refuse to discharge any patient involuntarily committed, if, in his judgment, such discharge will be detrimental to the public welfare or injurious to the patient.

If the guardian, committee or relatives of such patient refuse to provide properly for his care and treatment, the person in charge of such institution may:

1. Apply to the Commissioner for the transfer of the patient to a state hospital; or
2. Apply to the Director of the United States Veterans' Administration Medical Center for the transfer of the patient to such center.

The state hospital or Veterans' Administration Medical Center may retain such patient under the authority of the admission or order applicable to the private hospital from which such patient was transferred. No such transfer shall alter any right of a patient under the provisions of Chapter 2 (§ 37.1-63 et seq.) of Title 37.1 nor shall such transfer divest a judge or court, before which a hearing or request therefor is pending, of jurisdiction to conduct such hearing. Prior to accepting the transfer of any patient from a private hospital, the Commissioner shall receive from such hospital a report which indicates that the patient is in need of further hospitalization. Upon admission to a state facility of a person pursuant to this section, the director of the facility shall notify the community services board or community mental health clinic which serves the area of which the committed person is a resident of the person's name and local address and of the location of the facility in which the person has been hospitalized, provided that such person or his guardian has authorized the release of such information.

The person in charge of a private hospital may grant a convalescent status to a patient in accordance with rules prescribed by the Board.

§ 37.1-100

Discharge of nonresident

The Commissioner may discharge a nonresident admitted under § 37.1-65 and shall do so whenever it is necessary to accommodate a resident patient.

§ 37.1-101

Providing drugs or medicines for certain persons released from state hospitals

When any patient is released from a state hospital, if such patient or the person legally liable for his care and treatment is financially unable to pay for drugs or medicines which are prescribed for him by a member of the medical staff of the state hospital in order to mitigate or prevent a recurrence of the condition for which he has received care and treatment in such institution, the Department or the community services board serving the patient's county or city of residence may, from funds appropriated to the Department for that purpose, provide such patient from time to time with such drugs and medicines. Such medication shall be dispensed only in accordance with law.

§ 37.1-107

Nonresidents

Nothing in this title shall be construed to forbid any hospital to charge for the removal, care and maintenance of any mentally ill, alcoholic or mentally retarded nonresident who has been admitted to such hospital, and whose committee or next friend has contracted with such hospital for the care and maintenance of such person, nor shall it be construed to permit the admission or retention of any nonresident to the exclusion of a resident of the Commonwealth.

§ 37.1-134.5

Judicial authorization of treatment and detention of certain persons

A. An appropriate circuit court, or judge as defined in § 37.1-1, may authorize on behalf of an adult person, in accordance with this section, a specific treatment or course of treatment for a mental or physical disorder, if it finds upon clear and convincing evidence that (i) the person is either incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, and (ii) the proposed treatment is in the best interest of the person.

B. For purposes of this section:

"Disorder" shall include any physical or mental disorder or impairment, whether caused by injury, disease, genetics, or other cause

"Incapable of making an informed decision" shall mean unable to understand the nature, extent or probable consequences of a proposed treatment, or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to that treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.

C. Any person may request authorization of a specific treatment, or course of treatment, for an adult person by filing a petition in the circuit court, or with a judge as defined in § 37.1-1, of the county or city in which the allegedly incapable person resides or is located, or in the county or city in which the proposed place of treatment is located. Upon filing such a petition, the petitioner or the court shall deliver or send a certified copy of the petition to the person for whom treatment is sought and, if the identity and whereabouts of the person's next of kin are known, to the next of kin.

D. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney to represent the interests of the allegedly incapable person at the hearing. However, such appointment shall not be required in the event that the person, or another interested person on behalf of the person, elects to retain private counsel at his own expense to represent the interests of the person at the hearing. In the event that the allegedly incapable person is indigent, his counsel shall be paid by the Commonwealth as provided in § 37.1-89 from funds appropriated to reimburse expenses incurred in the involuntary mental commitment process. However, this provision shall not be construed to prohibit the direct payment of an attorney's fee either by the patient, or by an interested person on his behalf, which fee shall be subject to the review and approval of the court.

E. Following the appointment of an attorney pursuant to subsection D above, the court shall schedule an expedited hearing of the matter. The court shall notify the person who is the subject of the petition, his next of kin, if known, the petitioner, and their respective counsel of the date and time for the hearing. In scheduling such a hearing, the court shall take into account the type and severity of the alleged physical or mental disorder, as well as the need to provide the person's attorney with sufficient time to adequately prepare his client's case.

F. Notwithstanding the provisions of subsections C and E above regarding delivery or service of the petition and notice of the hearing to the next of kin of any person for whom consent to observation, testing or treatment is sought, if such person is a patient in any hospital at the time the petition is filed, the court, in its discretion, may dispense with the requirement of any notice to the next of kin.

G. Evidence presented at the hearing may be submitted by affidavit in the absence of objection by the person who is the subject of the petition, the petitioner, either of their respective counsel, or by any other interested party. Prior to the hearing, the attorney shall investigate the risks and benefits of the treatment decision for which authorization is sought and of alternatives to the proposed decision. The attorney shall make a reasonable effort to inform the person of this information and to ascertain the person's religious beliefs and basic values and the views and preferences of the person's next of kin.

H. Prior to authorizing treatment pursuant to this section, the court shall find:

That there is no legally authorized guardian or committee available to give consent;

2. That the person who is the subject of the petition is incapable either of making an informed decision regarding a specific treatment or course of treatment or is physically or mentally incapable of communicating such a decision;

3. That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and

4. That the proposed treatment or course of treatment is in the best interest of the patient. However, the court shall not authorize a proposed treatment or course of treatment which is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values unless such treatment is necessary to prevent death or a serious irreversible condition. The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

I. The court may not authorize the following under this section:

1. Nontherapeutic sterilization, abortion, or psychosurgery.

2. Admission to a mental retardation facility or a psychiatric hospital, as defined in § 37.1-1. However, the court may issue an order under this section authorizing a specific treatment or course of treatment of a person whose admission to such facility has been or is simultaneously being authorized under §§ 37.1-65, 37.1-65.1, 37.1-65.2, 37.1-65.3, or § 37.1-67.1, or of a person who is subject to an order of involuntary commitment previously or simultaneously issued under § 37.1-67.3.

3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive therapy for a period to exceed 60 days pursuant to any petition filed under this section. The court may authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have been considered, and that electroconvulsive therapy is the most effective treatment for the person. Even if the court has authorized administration of antipsychotic medication or electroconvulsive therapy hereunder, these treatments may be administered over the person's objection only if he is subject to an order of involuntary commitment, including outpatient involuntary commitment, previously or simultaneously issued under § 37.1-67.3 or the provisions of Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2.

4. Restraint or transportation of the person, unless it finds upon clear and convincing evidence that restraint or transportation is necessary to the provision of an authorized treatment for a physical disorder.

J. Any order authorizing treatment pursuant to subsection A shall describe the treatment or course of treatment authorized and may authorize generally such related

examinations, tests, or services as the court may determine to be reasonably related to the treatment authorized. The order shall require the treating physician to review and document the appropriateness of the continued admission of antipsychotic medications not less frequently than every thirty days. Such order shall require the treating physician or other service provider to report to the court and the person's attorney any change in the person's condition resulting in probable restoration or development of the person's capacity to make and to communicate an informed decision prior to completion of the authorized treatment and related services. The order may further require the treating physician or other service provider to report to the court and the person's attorney any change in circumstances regarding the authorized treatment or related services which may indicate that such authorization is no longer in the person's best interests. Upon receipt of such report, or upon the petition of any interested party, the court may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order shall be subsequently executed.

K. Any order hereunder of a judge, or of a judge or magistrate under subsection M, may be appealed de novo within ten days to the circuit court for the jurisdiction where the order was entered, and any such order of a circuit court hereunder, either originally or on appeal, may be appealed within ten days to the Court of Appeals.

L. Any licensed health professional or licensed hospital providing treatment, testing or detention pursuant to the court's or magistrate's authorization as provided in this section shall have no liability arising out of a claim to the extent it is based on lack of consent to such treatment, testing or detention. Any such professional or hospital providing, withholding or withdrawing treatment with the consent of the person receiving or being offered treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent if a court or a magistrate has denied a petition hereunder to authorize such treatment, and such denial was based on an affirmative finding that the person was capable of making and communicating an informed decision regarding the proposed provision, withholding or withdrawal of treatment.

M. Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding of probable cause to believe that an adult person within the court's or a magistrate's jurisdiction is incapable of making an informed decision regarding treatment of a physical or mental disorder, or is incapable of communicating such a decision due to a physical or mental disorder, and that the medical standard of care calls for testing, observation or treatment of the disorder within the next twenty-four hours to prevent death, disability or a serious irreversible condition, the court or, if the court is unavailable, a magistrate may issue an order authorizing temporary detention of the person by a hospital emergency room or other appropriate facility and authorizing such testing, observation or treatment. The detention may not be for a period exceeding twenty-four hours unless extended by the court as part of an order authorizing treatment under subsection A. If before completion of authorized testing, observation or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on

the person's decision on whether to consent to further observation, testing or treatment. If before issuance of an order under this subsection or during its period of effectiveness, the physician learns of objection by a member of the person's immediate family to the testing, observation or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify or terminate the order.

N. The provisions of § 37.1-89 relating to payment by the Commonwealth shall not apply to the cost of detention, testing or treatment under this section.

O. Nothing in this section shall be deemed to affect the right to use, and the authority conferred by, any other applicable statutory or regulatory procedure relating to consent, or to diminish any common law authority of a physician or other treatment provider to provide, withhold or withdraw services to a person unable to give or to communicate informed consent to those actions, with or without the consent of the person's relative, including but not limited to common law or other authority to provide treatment in an emergency situation; nor shall anything in this section be construed to affect the law defining the conditions under which consent shall be obtained for medical treatment, or the nature of the consent required.

§ 37.1-197

Community services board; powers and duties

Every community services board shall:

1. Review and evaluate all existing and proposed public community mental health, mental retardation and substance abuse services and facilities available to serve the community and such private services and facilities as receive funds through the board and advise the appropriate local governments as to its findings.

2. Submit to the governing body or bodies of each political subdivision, of which it is an agency, a program of community mental health, mental retardation and substance abuse services and facilities for its approval.

3. Within amounts appropriated therefor, execute such programs and maintain such services as may be authorized under such appropriations.

4. In accordance with its approved program, enter into contracts for rendition or operation of services or facilities.

5. Make rules or regulations concerning the rendition or operation of services and facilities under its direction or supervision, subject to applicable standards or regulations promulgated by the State Board.

6. Appoint a coordinator or director of community mental health, mental retardation and substance abuse services, according to minimum qualifications as may be established by the Department, and prescribe his duties. The compensation of such coordinator or director shall be fixed by the board within the amounts made available by appropriation therefor.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and collection of the same. All fees collected shall be included in the program submitted to the local governing body or bodies pursuant to subdivision 2 hereof and in the budget submitted to the local governing body or bodies pursuant to § 37.1-198 and shall be used only for community mental health, mental retardation and substance abuse purposes. Every board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under the jurisdiction or supervision of the board consistent with the provisions of § 37.1-202.1 and from responsible third-party payors. Boards shall not attempt to bill or collect fees for time spent participating in involuntary commitment hearings pursuant to § 37.1-67.3.

8. Accept or refuse gifts, donations, bequests or grants of money or property from any source and utilize the same as authorized by the governing body or bodies of the political subdivision or subdivisions of which it is an agency.

9. Seek and accept funds through federal grants. In accepting such grants the board shall not bind the governing body or bodies of the political subdivision or subdivisions of which it is an agency to any expenditures or conditions of acceptance without the prior approval of such governing body or bodies.

10. Have authority, notwithstanding any provision of law to the contrary, to disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of the political subdivision of which the board is an agency or, in the case of a joint board, as may be established by agreement.

11. Apply for and accept loans as authorized by the governing body or bodies of the political subdivision or subdivisions of which it is an agency. This provision is not intended to affect the validity of loans so authorized and accepted prior to July 1, 1984.

12. Develop joint annual written agreements, consistent with policies and procedures established by the State Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging and regional Department of Rehabilitative Services offices. The agreements shall specify what services will be

provided to clients. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

§ 37.1-197.1

Prescription team

A. In order to provide comprehensive mental health, mental retardation and substance abuse services within a continuum of care, the community services board shall:

1. Establish and coordinate the operation of a prescription team which shall be composed of representatives from the community services board, social services or public welfare department, health department, Department of Rehabilitative Services serving in the community services board's area and, as appropriate, the social services staff of the state institution serving the community services board's catchment area and the local school division. Such other human resources agency personnel may serve on the team as the team deems necessary. The team, under the direction of the community services board, shall be responsible for integrating the community services necessary to accomplish effective prescreening and predischarge planning for clients referred to the community services board. When prescreening reports are required by the court on an emergency basis pursuant to § 37.1-67.3, the team may designate one team member to develop the report for the court and report thereafter to the team.

2. Provide prescreening services prior to the admission for treatment pursuant to § 37.1-65 or § 37.1-67.3 of any person who requires emergency mental health services while in a political subdivision served by the board.

3. Cooperate and participate in predischarge planning for any person, who prior to hospitalization resided in a political subdivision served by the board or who chooses to reside after hospitalization in a political subdivision served by the board, who is to be released from a state hospital pursuant to § 37.1-98.

B. The community services board may perform the functions set out in subsection A hereof in the case of children by referring clients who are minors to the locality's family assessment and planning team and cooperating with the community policy and management team in the coordination of services for troubled youths and their families.

§ 63.1-174.001

Admissions and discharge

A. The Board shall promulgate regulations:

Governing admissions to adult care residences.

2. Establishing a process to ensure that residents admitted or retained in an adult care residence receive the appropriate services and that, in order to determine whether a resident's needs can continue to be met by the residence and whether continued placement in the residence is in the best interests of the resident, each resident receives periodic independent reassessments and reassessments in the event of significant deterioration of the resident's condition.

3. Governing appropriate discharge planning for residents whose care needs can no longer be met by the residence.

4. Addressing the involuntary discharge of residents.

5. Requiring that residents are informed of their rights pursuant to § 63.1-182.1 at the time of admission.

6. Establishing a process to ensure that any resident temporarily detained in an inpatient facility pursuant to § 37.1-67.1 is accepted back in the adult care residence if the resident is not involuntarily committed pursuant to § 37.1-67.3.

B. Adult care residences shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency.

2. Dermal ulcers III and IV, except those stage III ulcers which are determined by an independent physician to be healing.

3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection C.

4. Airborne infectious disease in a communicable state, that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold.

5. Psychotropic medications without appropriate diagnosis and treatment plans.

6. Nasogastric tubes.

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection C.

8 Individuals presenting an imminent physical threat or danger to self or others.

9. Individuals requiring continuous licensed nursing care (seven-days-a-week, twenty-four-hours-a-day).

10 Individuals whose physician certifies that placement is no longer appropriate.

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the uniform assessment instrument and meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

12. Individuals whose health care needs cannot be met in the specific adult care residence as determined by the residence.

13. Such other medical and functional care needs of residents which the Board determines cannot properly be met in an adult care residence.

C. Except for auxiliary grant recipients, at the request of the resident, and pursuant to regulations of the State Board, care for the conditions or care needs defined in subdivisions B 3 and B 7 may be provided to a resident in an adult care residence by a licensed physician, a licensed nurse under a physician's treatment plan or by a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the resident. Regulations for this subsection shall be effective within 280 days of July 1, 1995.

D. In promulgating regulations pursuant to subsections A, B and C above, the Board shall consult with the Departments of Health and Mental Health, Mental Retardation and Substance Abuse Services.